IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 13TH APRIL 2007 / 23RD CHAITHRA 1929

WP(C).No. 29278 of 2006(I)

PETITIONER:

M.PANKAJAKSHI, AGED 61 YEARS,
W/O. GOPALAN MAIMA APARTMENTS,
MADHUR VILLAGE P.O., KASARGOD,
PIN-671 124.

BY ADV. SMT.P.K.RADHIKA

RESPONDENTS:

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1. STATE OF KERALA, REP. BY
SECRETARY, HOME DEPARTMENT,
GOVERNMENT OF KERALA, THIRUVANANTHAPURAM.

2. THE SUPERINTENDENT OF POLICE,
KASARGOD.

3. SUPERINTENDENT OF POLICE,
CBCID, KANNUR.

4. DIRECTOR,
CENTRAL BUREAU OF INVESTIGATION,
NEW DELHI.

BY ADV. SRI.S.SREEKUMAR, SC FOR CBI
GOVERNMENT PLEADER SRI.GIKKU JACOB

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13/04/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER's EXHIBITS

EXT.P1: PHOTOCOPY OF THE F.I.R IN CRIME NO.569/01 OF KASARGOD POLICE STATION.

EXT.P2: PHOTOCOPY OF THE COMPLAINT OF PETITIONER'S HUSBAND DATED 28.09.01.

EXT.P3: PHOTOCOPY OF THE JUDGMENT IN O.P.NO.9131/2002 DATED 10.4.02.

EXT.P4: PHOTOCOPY OF THE COMPLAINT OF THE PETITIONER TO THE 1ST RESPONDENT DATED 29.10.2002.

EXT.P5: PHOTOCOPY OF THE REPORT OF THE 3RD RESPONDENT TO THE HUMAN RIGHTS COMMISSION DATED 19.01.2005.

EXT.P6: PHOTOCOPY OF THE REPORT OF THE 2ND RESPONDENT TO THE HUMAN RIGHTS COMMISSION DATED 5.3.2005.

EXT.P7: PHOTOCOPY OF THE REPORT PUBLISHED IN NEW INDIAN EXPRESS DATED 13.11.2005.

EXT.P8: JUDGMENT DATED 30.01.2006 IN WP(C).NO.32794/05 (D).

/TRUE COPY/

P.A TO JUDGE

R.BASANT, J

W.P(C).No.29278 of 2006

Dated this the 13th day of April, 2007

JUDGMENT

The facts revealed in this case are shocking. How absence of a proper and efficient investigation can shock the conscience of the community and leave citizens with the sense of despair and frustration is revealed evidently from the facts and circumstances of this case. I shall carefully avoid any detailed reference to the facts or the allegations. Suffice it to say that after going through the voluminous records in this case, I am left with a deep sense of dissatisfaction about the manner in which the crime has been investigated. The unfortunate plight of the petitioner, the mother of a deceased person, does evoke great sympathy, anguish and trauma in my mind.

2. The petitioner's son, a Hindu by religion, had fallen in love with a Muslim girl of the neighbourhood. They had eloped in May, 2001. Apprehending hostility locally, they fled to a relative of the boy, who was prepared to accept the couple and they lived together in a town in Tamil Nadu. They allegedly got married in between. There were efforts to trace the couple by the relatives of the girl. Threats and intimidation were held out against the relatives of the boy. Even the couple were contacted over the telephone and they were allegedly

intimidated. Relatives of the boy in Tamil Nadu were also intimidated. Ultimately on the persuasion of persons and because of the compulsion of the boy to earn a livelihood, he had gone back to Kasaragod and had taken up residence at his house along with the girl. The parents of the boy accepted the couple. On 18.09.2001, the petitioner's son was murdered. Even the F.I.R shows that it was 1st accused who allegedly committed the offence. He was accompanied by the 2nd accused in a car in which the deceased was taken and stabbed. He was taken to the hospital. Enroute to the hospital, the petitioner's son breathed his last. Then started the tale of investigation in this case. The petitioner had come to this Court on a couple of occasions and this Court had directed ultimately as per order dated 30.1.2006 that a very high ranking police official - Deputy Inspector General of Police, must himself monitor the investigation.

3. Even now after the lapse of a period of about 6 years, the investigation has not been completed. The Superintendent of Police, Crime Branch C.I.D who was monitoring the investigation has now submitted a port to the Additional Director General of Police, in which he has summarised the conclusions in the case. Five accused have been identified. Accused 1 and 2, as stated earlier are the persons who had actually inflicted the injuries. Accused Nos.3 & 4 are allegedly conspirators who along with accused 1 and 2 had planned the commission of murder. Accused 5 had allegedly enabled the 1st

accused to flee and escape to the neighbouring State and from there to a place abroad. Accused No.1 has not been traced so far. All the other accused have been arrested.

4. I shall borrow the words of the investigator and extract the following summary of the result of the investigation so far.

> "On an analysis of the evidence collected so far, it is revealed that to wreak vengeance against Balakrishnan for marrying a muslim girl, A1 and A4 conspired at Room No.101 in Victoria Lodge Kasargod on 11.8.01. A1 made friendship with the deceased and took him in a hired car CTA 2697 after fixing a remuneration of Rs.25,000/- and a visa and drove the car to a secluded area at Chemmanad Kadav and at about 2230 hrs A1 stabbed the deceased who was sitting in the front seat of the car on his neck and A2 with a same knife stabbed on his chest three times. Escaping from the car, Balakrishnan with bleeding injuries ran towards the nearby Mosque screaming for help and fell down on the varanda saying that his friend Iqbal had stabbed him. He succumbed to his injuries on his way to hospital. A5 permitted A1 to stay in his out house after the incident and took him to Mangalore at 0600 hrs on 19.9.01 in his car KA 21/N-300 facilitating him to escape. Hence A1 to A5 are liable to be prosecuted u/s 302, 120(B)(i), 212 r/w 34 IPC."

5. I have gone through the said report dated 25.09.2006. I have gone through the factual report, submitted by the Deputy Superintendent, C.B.C.I.D, Kasaragod, which is also appended to the said statement.

6. It is relevant to note that though it is alleged that accused 1 to 3 were the conspirators, no particular motive is seen alleged at all for accused 1 to 3 to commit the offence. In no way is accused 1 to 3 connected to the relatives of the girl who felt aggrieved by the marriage. It is not at all revealed as to what motivation prompted accused 1 to 3 to enter into a conspiracy as alleged. The story narrated by the investigator has so many loose ends that it is difficult for an ordinarily prudent person to accept and swallow the said version. I shall not enter into any further detailed discussions. I am satisfied and convinced that the investigation has not been done properly and adequately. The 1st accused is said to be abroad even now and in spite of the lapse of more than half a decade, no trace of the 1st accused has been made. Completion of the investigation without the arrest of the 1st accused would be a transparent case of negation of justice. I am satisfied that a break through in investigation can be achieved only when the 1st accused is arrested. I may state the ultimate impression that I gather from the totality of circumstances by stating that the Court is satisfied that the investigators have only touched the tip of the iceberg. The assumption that accused 1 and 2 alone are responsible for the ploy does appear to me to be puerile .

7. I am convinced, in these circumstances, that this is an eminently fit case where the Central Bureau of Investigation must be

directed to take over the investigation in this case. In the interests of more efficient and purposive investigation as also to enthusiastically pursue the arrest of the 1st accused, who is absconding abroad allegedly, I am satisfied that a more competent agency with better resources and infrastructures to continue the investigation must be entrusted with the investigation. I have gone through the entire case diary and I am restraining myself to make no further comments about the nature and quality of the investigation that has been conducted.

8. In the result, this Writ Petition is, allowed. It is directed that the C.B.I shall continue the investigation in Crime No.569 of 2001 of Kasaragod Police Station, which has been re-numbered as C.B.C.I.D Crime No.121/CR/2003. In the peculiar facts and circumstances of the case, I deem it appropriate to observe that the C.B.I must put the best, the most competent, the most dedicated and the most efficient hands at its disposal to conduct the investigation into this case and the State Government must ensure that the C.B.I is given all assistance of men and resources to conduct and complete the investigation at the earliest.

(R.BASANT, JUDGE)

rtr/-